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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,944	02/20/2004	John B. Swanton	BPS-0101	4813
54004 7590 06/20/2008 MUIRHEAD AND SATURNELLI, LLC 200 FRIBERG PARKWAY SUITE 1001 WESTBOROUGH, MA 01581				
EXAMINER				
BARNES-BULLOCK, CRYSTAL JOY				
ART UNIT		PAPER NUMBER		
2121				
MAIL DATE		DELIVERY MODE		
06/20/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/783,944

Applicant(s)

SWANTON ET AL.

Examiner

Crystal J. Barnes Bullock

Art Unit

2121

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 1-13 and 28-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14, 16-23 and 32-45 is/are rejected.
- 7) ☒ Claim(s) 15 and 24-27 is/are objected to.
- 8) ☒ Claim(s) 1-45 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 27 July 2004
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The following is an initial Office Action upon examination of the above-identified application on the merits. Claims 1-45 are pending in this application.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 1-13, drawn to a control panel, are classified in class 715, subclass 716.
 - II. Claims 14-27 and 32-45, drawn to controlling a show, classified in class 700, subclass 83.
 - III. Claims 28-31, drawn to a system used in broadcasting, classified in class 715, subclass 717.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination II has

separate utility such as providing redundant/backup communication connection for reliability. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

4. Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination III has separate utility such as a system used in broadcasting. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

5. Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination III has separate utility such as a system used in broadcasting. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring

all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

6. Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);

(d) the prior art applicable to one invention would not likely be applicable to another invention;

(e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

7. During a telephone conversation with Examiner John M. Heffington and Attorney Anne E. Saturnelli, Reg. No. 41,290, on 4 February 2008, a provisional election was made without traverse to prosecute the invention of Group II, claims 14-45. The restriction requirement by Examiner Heffington was improper. There are three distinct inventions not two as described above. Applicants' elected Group II in the Office Communication received on 17 March 2008 which now consists of claims 14-27 and 32-35. Claims 28-31 were improperly restricted to Group II. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-13 and 28-31 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Information Disclosure Statement

9. The examiner has considered the information disclosure statement (IDS) submitted on 27 July 2004.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 23 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

12. Claims 23 and 40 recite the limitation "said multiple control panels" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claims 22 and 40 recite the limitation "multiple control panels".

Claim Rejections - 35 USC § 101

13. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

14. Claims 32-45 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A computer program product per se does not fall within any of the categories of patentable subject matter set forth in USC 101. A computer program product per se is clearly not a "process" under USC 101 because it is not a series of steps. The other three USC 101 classes of machine, manufacture, and compositions of matter relate to structural entities and can be grouped as "product" claims in order to contrast them with process claims. The three product classes require physical structure or material. A computer program product per se has no physical structure, does not itself perform any useful, concrete tangible result and, thus, does not fit within the definition of a machine. A computer program, without a computer-readable medium needed to

realize the computer program's functionality, is nonstatutory functional descriptive material. A computer program product per se does not fall within the definitions of manufacture. A computer program product per se is not a composition of matter. Thus, a computer program product per se does not fall within one of the four statutory classes of USC 101.

Claim Rejections - 35 USC § 102

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

16. Claims 14, 16-23, 32 and 34-41 are rejected under 35 U.S.C. 102(e) as being anticipated by USPN 7,222,256 B2 to Pickell.

As per claim 14, the Pickell reference discloses a method of controlling a show comprising: sending messages between a control panel (see column 4 lines 60-

61, "control panel 104A") and a computer system (see column 5 lines 15-18, "central processing system 106") over a primary communication connection (see column 5 lines 64-66, "primary communication link 116") to control one or more devices (see column 5 lines 12-18, "devices 102"); monitoring said primary communication connection ("primary communication link 116") to determine if said computer system ("central processing system 106") is unavailable for communicating with said control panel ("control panel 104A"); and in response to determining that said computer system ("central processing system 106") is unavailable, using a backup communication connection (see column 5 lines 65-66, "one or more redundant communication links 118A, 118B") to control said one or more devices ("devices 102") during said show ("networked safety systems").

As per claim 16, the Pickell reference discloses said primary communication connection ("primary communication link 116") is independent from said backup connection ("one or more redundant communication links 118A, 118B").

As per claim 17, the Pickell reference discloses said computer system ("central processing system 106") controls at least one of said one or more devices ("devices 102") by communicating with a router (see columns 7-8 lines 66-1, "hub

238") to which said computer system ("central processing system 106") and said at least one device ("devices 102") is connected.

As per claim 18, the Pickell reference discloses at least one of said one or more devices ("devices 102") is directly connected to said computer system ("central processing system 106").

As per claim 19, the Pickell reference discloses said control panel (see columns 7-8 lines 65-3, "control panel 202") is connected to said router ("hub 238") using said backup communication connection ("LAN communication link 230").

As per claim 20, the Pickell reference discloses further comprising: sending a message from said control panel ("control panel 104A") to said computer system ("central processing system 106") in response to a selection on said control panel ("control panel 104A").

As per claim 21, the Pickell reference discloses further comprising, in response to receiving said message (see column 5 lines 57-58, "information, alarms, etc."); updating state information ("information, alarms, etc.") about said control panel ("control panel 104A"); and updating system status ("information, alarms, etc.") of a show ("networked safety systems").

As per claim 22, the Pickell reference discloses said state information ("information, alarms, etc.") includes at least one of: information ("information, alarms, etc.") local to said control panel ("control panel 104A"), and information ("information, alarms, etc.") affecting a state of multiple control panels (see column 5 lines 23-25, "other control panels 104B, 104C").

As per claim 32, the rejection of claim 14 is incorporated and further claim 32 contains limitations recited in claim 14; therefore claim 32 is rejected under the same rational as claim 14.

As per claim 34, the rejection of claim 16 is incorporated and further claim 34 contains limitations recited in claim 16; therefore claim 34 is rejected under the same rational as claim 16.

As per claim 35, the rejection of claim 17 is incorporated and further claim 35 contains limitations recited in claim 17; therefore claim 35 is rejected under the same rational as claim 17.

As per claim 36, the rejection of claim 18 is incorporated and further claim 36 contains limitations recited in claim 18; therefore claim 36 is rejected under the same rational as claim 18.

As per claim 37, the rejection of claim 19 is incorporated and further claim 37 contains limitations recited in claim 19; therefore claim 37 is rejected under the same rational as claim 19.

As per claim 38, the rejection of claim 20 is incorporated and further claim 38 contains limitations recited in claim 20; therefore claim 38 is rejected under the same rational as claim 20.

As per claim 39, the rejection of claim 21 is incorporated and further claim 39 contains limitations recited in claim 21; therefore claim 39 is rejected under the same rational as claim 21.

As per claim 40, the rejection of claim 22 is incorporated and further claim 40 contains limitations recited in claim 22; therefore claim 40 is rejected under the same rational as claim 22.

Allowable Subject Matter

17. Claims 15 and 24-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

18. Claim 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references are cited to further show the state of the art with respect to redundant communication links in general:

USPN 7,302,320 B2 to Nasr et al.

USPN 6,728,601 B2 to Garcia et al.

USPN 6,496,948 B1 to Smorodinsky

USPN 6,061,809 to Glaser et al.

US Pub. No. 2004/0190685 A1 to Davies

US Pub. No. 2004/0054623 A1 to Collins et al.

JPPN 2003-162455 A to YAMAZAKI et al.

JPPN 11-308303 A to KAWAGISHI

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Crystal J. Barnes Bullock whose telephone number is 571.272.3679. The examiner can normally be reached on Monday-Friday alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on 571.272.2100. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Crystal J. Barnes Bullock/
Primary Examiner, Art Unit 2121
CJB
18 June 2008